BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	)	
	)	
Limitations on Commercial Time on Television Broadcast Stations	)	MM Docket No. 93-254
	)	
	)	

To: The Commission

COMMENTS ON NOTICE OF INQUIRY

NAMED STATED BROADCASTER ASSOCIATIONS

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Dated: December 20, 1993

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SUMMARY

The named State Broadcaster Associations (the "Associations") urge the Commission not to reimpose limitations on commercial time for television broadcast stations. The Commission eliminated commercial time guidelines for broadcast television in 1984 for a variety of sound reasons: the marketplace was increasingly competitive and self-regulating; the limitations placed direct and indirect burdens on broadcasters, as well as on the FCC; and the guidelines raised serious First Amendment concerns. Those factors still exist. Indeed, forbearance is even more compelling today.

The Commission's ability to regulate in this area is extremely limited. The 1984 deregulation of commercial time practices and other events have led to explosive growth not only in the number of television stations, but also in the number of other competitiors in the video marketplace. In addition to competition from "traditional" sources such as cable, a variety of technological advances exist, or are in development, that will force the television industry to spend millions of additional dollars in improved facilities just to stay competitive. The Congress, the FCC and the courts have recognized this level of intense competition and have taken numerous actions to provide each player in the video marketplace more freedom and flexibility to compete. Artificially limiting the flexibility of the broadcast industry as it faces significant challenges from a variety of video programming competitors, and continues to be hampered by the limitations of a single revenue stream, is both counterproductive and contrary to precedent.

Moreover, reimposing commercial limitations will place significant regulatory burdens on the FCC and television stations as a result of the monitoring, record-keeping and reporting requirements. Further, the limits have the potential for increasing the cost of advertising time, which could have an anti-competitive effect that would be especially detrimental to smaller stations and advertisers. This will negatively affect diversity in programming and the potential for the development of new broadcast networks.

Lastly, restrictions on commercial time may have the effect of jeopardizing any state broadcaster association which relies upon NCSA programs to help fund its operations. Commercial limitations may result in television members refusing to donate air time for these important programs.

The Associations appreciate the opportunity afforded them by the Commission to submit comments on this vitally important issue which will significantly affect the continued growth of broadcast television. As the Associations explain in detail in the Joint Comments, it is in the best interest of the television industry and the public that the Commission terminate this proceeding without reimposing any limitations on commercial time carried on television stations. Otherwise, by forbidding program-length commercials and other formats like home-shopping networks, the Commission will have penalized one segment of the video marketplace and in effect favored another segment. This is not only bad policy, it is wrong. Instead, the FCC should issue a statement reasserting its commitment to allowing the free marketplace to be free and self-regulating.

BEFORE THE

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WASHINGTON, D.C.

In the Matter of	)	
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Limitations on Commercial Time on Television Broadcast Stations	)))	MM Docket No. 93-254

To: The Commission

JOINT COMMENTS OF THE NAMED STATE BROADCASTER ASSOCIATIONS

The Alabama Broadcasters Association, the Arizona Broadcasters Association, the California Broadcasters Association, the Connecticut Broadcasters Association, the Georgia Association of Broadcasters, the Illinois Broadcasters Association, the Kansas Association of Broadcasters, the Kentucky Broadcasters Association, the Maryland/District of Columbia/Delaware Broadcasters Association, the Minnesota Broadcasters Association, the Missouri Broadcasters Association, the Montana Broadcasters Association, the Nebraska Broadcasters Association, the New Hampshire Association of Broadcasters, the New York State Broadcasters Association, the North Dakota Broadcasters Association, the Oklahoma Association of Broadcasters, the Pennsylvania Association of Broadcasters, the Texas Association of Broadcasters, the Utah Broadcasters Association, the Washington State Association of Broadcasters, the West Virginia Broadcasters Association, and the Wisconsin Broadcasters Association (collectively, the "Associations"), by their attorneys, hereby jointly comment in response to the Commission's Notice of Inquiry released October 7, 1993 in the above-referenced proceeding.[1/]

I. INTRODUCTION

1. The Associations appreciate the opportunity to provide their views on the issue of whether the FCC should reimpose limitations on the amount of commercial matter broadcast by television broadcast stations. The Associations have a direct interest in this matter since they are chartered to help preserve a regulatory and economic environment that is optimally conducive to the growth of the free, over-the-air, local television broadcast industry. The Associations believe that any form of commercial time or format limitations, whether they be called policies, rules or guidelines, are unnecessary and will in fact work against the efforts by the single revenue stream, television broadcasters to continue to provide a responsive, local service in the increasingly fragmented, competitive video marketplace. Accordingly, the Associations urge the Commission not to reimpose any type of commercial time/format limitations.

2. The stated impetus for this proceeding is the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act of 1992") and, in particular, the debates on the must carry status of "home shopping" stations under Section 4(g). Congress has directed the Commission "to determine, regardless of

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[1/] Limitations on Commercial Time on Television Broadcast Stations, Notice of Inquiry, MM Docket No. 93-254, FCC 93-459, released October 7, 1993 (the "Notice").

prior proceedings, whether stations that are predominantly used for the transmission of sales presentations or program length commercials are serving the public interest, convenience, and necessity."[2] Congress did not require the Commission to examine other commercial practices. However, on its own motion, the Commission has broadened the inquiry.[3]

II. DISCUSSION

3. In 1973, the Commission established processing guidelines that in effect prohibited television stations from broadcasting more than 16 minutes of commercial matter per hour in order to regulate "perceived" problems of overcommercialization.[4] However, in 1984, the FCC eliminated these guidelines,[5] recognizing that television broadcasters require freedom and flexibility in their commercial time scheduling in order to remain competitive and responsive in the

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2/ Notice, at para. 4.

3/ Specifically, the Commission seeks comment on whether an excess of commercial programs disserves the public; what levels of such material are, in fact, excessive; whether there is a distinction between "commercialism" as it was defined in the 1984 Order deregulating commercials and the various commercial formats today; whether there is a material difference between the various types of commercial formats; whether any types of commercial limitations should be imposed and in what manner (minutes per hour, dayparts); how the FCC can ensure compliance if limits are established; and whether there are any First Amendment implications to commercial limitations. Notice, at paras. 7-8.

4/ Order (Amendments to Delegations of Authority), 43 FCC 2d 638 (1973).

5/ Report and Order, 98 FCC 2d 1076, 1101 ("Television Deregulation").

dynamic video marketplace. The FCC stated "that marketplace forces can better determine appropriate commercial levels than our own rules,"[6] and pointed to the fact that broadcast stations were already operating well within the guidelines.[7]

4. The Commission noted that there were less intrusive means of dealing with any perceived overcommercialism, including citizen complaints,[8] stating that "we can no longer continue to justify either the direct costs imposed by adherence to the commercial guideline -- the paperwork burden of record keeping, reviewing and monitoring -- or its more indirect costs such as possible anti-competitive effects or stifling commercial experimentation and intrusion into the realm of commercial speech protected by the First Amendment."[9] In short, the Commission concluded that its regulations could adversely affect the growth and development of broadcast television in competing with future video market entrants, with no offsetting public interest benefit.[10] As discussed herein, all of the factors underlying the Commission's 1984 decision to eliminate commercial time guidelines still exist. In fact, the case for forbearance is even more compelling today.

6/ Television Deregulation, at 1102.

7/ In fact, network stations averaged 10.4 minutes of commercial matter per hour and independent stations averaged only 9.6 minutes per hour. Id. at 1103.

8/ Id. at 1077.

9/ Id. at 1103.

10/ Id. at 1104.

A. The First Amendment Substantially Limits the Commission's Regulatory Participation in this Area

5. The Commission must act cautiously and with great restraint in the area of commercial time limitations. The Supreme Court has ruled that commercial speech is entitled to First Amendment protection if it passes a four-part test.[11/] Under the test, the government may not regulate the content of commercial speech (1) that concerns lawful activity and is not misleading, unless (2) the asserted governmental interest is substantial, (3) the regulation directly advances the governmental interest asserted, and (4) the regulation is not more extensive than is necessary to serve that interest.[12/] The Commission cannot meet the burdens set forth in this test. In fact, the Supreme Court has already ruled that commercials are entitled to protection, stating that "speech does not lose its First Amendment protection because money is spent to protect it, as in a paid advertisement of one form or another."[13/]

6. Under this test, it is clear that the FCC would run afoul of the First Amendment by reimposing time/format limitations. First, by reinstating commercial limits, the effect will be to regulate program content in at least three ways: directly, by regulating the amount of commercial matter broadcast; and indirectly, by regulating the format of commercial

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11/ Central Hudson Gas & Electric Corp. v. Public Service Comm'n of New York, 447 U.S. 557, 566 (1980) ("Central Hudson").

12/ Id. at 566.

13/ Cincinnati v. Discovery Network, Inc., 113 S.Ct. 1505 (1993).

material[14/] and by restricting each station's ability to produce revenues sufficient to acquire high quality, diverse programming.

7. Second, the Commission has failed to show a substantial government interest in the length and format of commercial matter. The concept of overcommercialization is too subjective to justify the contemplated commercial limits. One person's "perception" of overcommercialization is another person's entertainment preference in viewing a sponsor's travel log, course on fishing, or religious revival, or another person's convenience in being able to purchase goods and services from the home. In addition, the First Amendment bar to the imposition of commercial limits is further strengthened by the fact that the FCC intends to impose the restrictions by only shackling one segment of the video industry -- broadcast television.

8. As a by-product of attempting to regulate traditional commercial matter which "sells" products, the Commission will end up regulating programming which is not deceptive but is truly entertaining and/or informative. Commercial limits will essentially eliminate program-length commercials, which the Commission has previously determined do not disserve the public interest.[15/] Program-length commercials, as evidenced by the proliferation of such formats on cable channels, are desired by

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[14/] Commercial limits would indirectly regulate the format by potentially eliminating program-length commercials and home-shopping segments.

[15/] Family Media Inc., 2 FCC Rcd 2540 (1987).

the viewing public,[16] and their longer time frame allows for the inclusion of helpful information, as well as purely promotional matter. Also, the public's access to program diversity on free, broadcast television will directly suffer if, as will be the case, prohibited programs migrate to fee-based, non-broadcast media. Lastly, since the Commission has previously determined that the marketplace is self-regulating with respect to commercialization, the imposition of commercial limits are clearly unnecessary.[17] Accordingly, the First Amendment stands as a bar to the FCC's regulation of commercial time/format limits.

B. Deregulation of Commercial Time Practices Continues to Well Serve the Public Interest

9. There has been significant growth and increased competition in the video marketplace since the deregulation of commercial time practices. Since the Commission eliminated commercial limitations in 1984, there has been a substantial increase in the number of broadcast television stations, including dramatic growth in the number of independent stations. In 1980 there were 734 commercial television stations. By 1990,

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[16] Home shopping formats have also grown in popularity, and often serve an important function by providing revenue to start-up independent stations until they are able to attract national advertisers.

[17] Television Deregulation, at 1105. If the Commission is concerned with protecting the public from false or misleading advertisements, it could easily tailor narrow regulations that would resolve any problems.

there were over 1090 commercial broadcast stations.[18] The majority of that expansion occurred in the number of UHF stations and independent stations. Between 1980 and 1990 the number of UHF stations increased from 218 to 546, and the number of independent stations increased from 129 to 380.[19] In addition, a fourth broadcast television network has been born, the Fox Network, with over 100 affiliates. Two other companies, Time-Warner and Paramount, are considering forming a fifth network.[20] Lastly, the fundamental competitive makeup of the video marketplace has changed dramatically. Where broadcast television used to be the predominant video provider, there are now numerous challengers for the viewing audience and advertising dollars.

10. A major competitor to broadcast television -- cable -- is increasingly seen as the predominant video source. Not only has the number of cable systems increased, there has been significant growth in the number of cable networks and program producers. In fact, there are now over 70 cable television networks, as compared with four broadcast networks.[21] Cable's power is demonstrated by the fact that none of the major television broadcast networks were able to secure retransmission

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[18] F. Setzer and J. Levy, Broadcast Television in a Multichannel Marketplace, FCC Office of Plans and Policy Working Paper No. 26, 6 FCC Rcd 3996, 4011 (1991) ("OPP Report).

[19] Id.

[20] See infra notes 48-49 and accompanying text.

[21] See infra notes 39-41 and accompanying text.

fees from cable operators pursuant to the Cable Act of 1992. Cable's market power is also enhanced by its fundamental difference from broadcast television -- cable is supported by multiple revenue streams comprised of subscription fees paid by customers, advertising fees paid by advertisers, etc. Broadcast television stations, hampered as they are by relying on a single revenue stream -- commercial advertising -- need the flexibility to maximize that single revenue source.

11. Cable-telco mergers will make it even more difficult for broadcasters to compete successfully. Telephone companies, with their huge revenue base, will provide almost unlimited sources of funds for continued expansion, technological upgrades and program acquisition. As the Commission is aware, TCI, the largest cable operator in the nation, is planning to merge with one of the largest telephone companies, Bell Atlantic. Also recently announced is the planned cable television joint venture between Southwestern Bell and Cox Cable Communications. These transactions, which will probably lead to others, are major events that will challenge the ability of broadcast television stations to remain locally responsive outlets in their respective communities. If the Commission imposes commercial limits on television, it will jeopardize the fundamental health of an industry that has already been buffeted by increasingly fragmented audiences, the growing power of cable, the recession,

the need to finance costly technological upgrades, decreasing advertising revenue, and decreasing profits.[22]

C. Actions Taken by the Congress, the FCC and the Courts Leave No Alternative But Continued Deregulation of Commercial Time Practices

12. Since 1984, the Commission, as well as the U.S. Courts and the Congress, have recognized that in the face of intense competition, the regulations binding the key players in the video marketplace were too restrictive. In decision after decision, regulations have been loosened to allow program providers to adapt to a changing world:

- In 1991, the Commission's Office of Plans and Policy released a study which found that there was significant competition to broadcast television and that these competitive forces were affecting the ability of broadcast television to contribute to the diverse and competitive video programming marketplace.[23] The OPP Report found that in the face of the enormous expansion in programming sources, the percentage of total viewing captured by broadcast stations fell from 81% in the 1984-85 television season to 70% during the 1989-90 season.[24] Further, real profits for the average independent station had dropped 68% since 1984.[25] Finally, the number of stations facing losses was as high as 50% for independents in markets outside the top 10.[26]

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[22] The Commission recognized, in 1992, that advertising revenue and profits were declining for broadcast television stations. See Notice of Proposed Rulemaking, 7 FCC Rcd 4111 (1992) ("Television Ownership"), at paras. 5-6.

[23] See OPP Report, supra note 18.

[24] Id. at 4017.

[25] Id. at 4025.

[26] Id.

- In June, 1992, prompted by the findings of the OPP Report, the Commission instituted a rulemaking[27] to relax the ownership limitations imposed on television broadcasters. The Commission, recognizing the increased competition in the video marketplace, stated that it did not want to perpetuate unnecessary regulations that would impede the competitive ability of broadcast stations.[28] The Commission noted that cable will pose a bigger threat as it becomes an increasingly attractive advertising medium.[29]

- In July of 1992, the Commission amended its rules to permit local telephone companies to offer video dialtone.[30] The Commission found that video dialtone will encourage the widespread distribution of video programming, and further the public interest goals of: (1) fostering additional competition in the video market so that market forces, rather than government regulation, determine the success or failure of new services; and (2) fostering a diversity of video services in order to create additional opportunities for consumer choice.[31]

- In adopting the Cable Act in 1992, Congress recognized the intense competition facing broadcast television, especially from cable, and the governmental interest in supporting diversity through multiple forms of video media, and stated that:

    - There is a substantial government interest in promoting the continued viability of free television programming, especially for viewers who are unable to afford other means of receiving programming.[32]

27/ See Television Ownership, supra note 22.

28/ Television Ownership, at para. 11.

29/ Id. at para. 7.

30/ Telephone Company-Cable Television Cross-Ownership Rules, Second Report and Order, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking, 7 FCC Rcd 5781 (1992).

31/ Id. at 5787.

32/ Cable Act of 1992, at §2(a)(12).

- As a result of the growth in cable television there has been a marked shift in market share from broadcast television to cable television services.[33]

- As the proportion of households subscribing to cable television increases, proportionately more advertising revenues will be reallocated from broadcast to cable television systems.[34]

- In August, 1993, the U.S. District Court for the Eastern District of Virginia ruled that 47 U.S.C. §533(b), which prohibits telephone companies and their affiliates from providing video programming to subscribers within their service areas, was unconstitutional.[35] The Court noted that there has been tremendous expansion in the number of cable stations and non-broadcast video programming, and found that contrary to the government's assertion, §533(b) does not promote competition in the video programming market.[36]

- In October, 1993, the Commission relaxed its rules concerning network financial interests and syndication.[37] Part of the FCC's impetus for diminishing regulation in this area was the changing and self-regulating video marketplace and the realization that needless rules would only hamper broadcast television in its struggle to compete and remain a viable public resource. In relaxing the rules, the Commission observed that the role and power of the established broadcast networks had diminished and that cable television had emerged as a major competitive force.[38]

33/ Cable Act of 1992, at §2(a)(13).

34/ Id. at §2(a)(14).

35/ The Chesapeake and Potomac Telephone Company of Virginia, et al. v. United States of America, et al., Case No. 92-1751-A, released August 24, 1993 (D.C. East. Dist. Va.).

36/ Id. at pp. 13, 43.

37/ In the Matter of Evaluation of the Syndication and Financial Interest Rules, Memorandum Opinion & Order, MM Docket No. 90-162, FCC 93-458, released October 22, 1993 ("Finsyn").

38/ Finsyn, at para. 2.

- In November of 1993, the U.S. District Court for the Central District of California modified the consent decrees that bound ABC, CBS and NBC so that the decrees would no longer prevent those networks from enjoying the competitive freedoms contemplated under the Commission's Finsyn action.[39] In the decision, the Court recognized the significant changes that have occurred in the video marketplace in the past 20 years.[40] The Court noted that the total number of cable systems has increased to over 10,000, with over 56 million subscribers and more than 70 cable networks, 6 major premium movie networks, 8 pay-per-view networks and at least 24 regional sports networks.[41]

Faced with this growth in outlet diversity and program diversity, television stations are more and more regulated by the choices their viewers make. If too many hold the "perception" that a station is overcommercializing, they will regulate the station's commercial practices by choosing another program or program provider. The FCC's oversight is unnecessary.

D. Technological Advances in the Video Marketplace Already Pose a Double-Edged Investment Challenge for Broadcast Television

13. In addition to the increased competition facing broadcast television from "traditional" video technologies such as cable, a multitude of other video technologies, both existing and in development, pose added threats to the viability of broadcasters. These advanced technologies are a double-edged challenge: they put downward pressure on revenues at a time when

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[39] United States of America vs. The National Broadcasting Company, Inc. et al., Case Nos. CV74-3601-R, CV74-3600-R, CV74-3599-R, released November 10, 1993 (D.C. Cen. Dist. Cal.).

[40] Id.

[41] Id.

broadcast television needs to spend substantial additional monies for facilities improvements just to stay competitive. These technologies include:

- Multi-channel Multi-point Distribution Systems ("MMDS")
- Direct Broadcast Satellite ("DBS")
- Instructional Television Fixed Service ("ITFS")
- Signal compression, which will allow hundreds of channels to be compressed into small frequency bandwidths
- Interactive television
- Fiber optics, which will allow for the delivery of signals into homes on an almost interference-free basis
- Advanced Television ("ATV"), which includes both High Definition Television ("HDTV") and Enhanced Definition Television ("EDTV").[42]

14. These technologies present new competition to broadcast television, thereby continuing to fragment their viewing audiences as well as impairing broadcasters' ability to generate added revenue. In addition, broadcasters will be forced to expend scarce resources to keep pace with technology. For example, it has been estimated that switching to HDTV will cost over $1.5 million per station for pass-through of network

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[42] HDTV systems are proposing to offer approximately twice the vertical and horizontal resolution of current television signals, and will require special television receivers. EDTV, on the other hand, will provide a limited improvement over current reception but will allow the continued use of existing receivers. <u>Notice of Proposed Rule Making</u>, MM docket No. 87-268, FCC 91-337, released November 8, 1991 ("<u>Advanced Television</u>").

programming, and over $9 million for total plant conversion.[43]

15. In addition to these advanced technologies, the consolidation of existing program libraries from which stations purchase their programs[44] will adversely affect the ability of broadcast stations to compete. As the number of cable channels increase, and as more popular programs are purchased by cable networks and other non-broadcast entities, the price of programs will rise, thereby increasing the cost of television station operations. Reinstating commercial limits will only exacerbate the problems facing broadcast television as it tries to adjust to the rapidly evolving video marketplace.

E. Reinstatement of Commercial Limits Will Unnecessarily Burden the FCC, the Television Industry, and Advertisers

16. In addition to the harmful effects discussed above, reinstatement of commercial limits has the potential for creating several other significant problems. Broadcasters already face significant monitoring, record-keeping and reporting requirements in order to comply with, for example, the FCC's important equal

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[43] Remarks of Alfred C. Sikes, Chairman, Federal Communications Commission, The Association for Maximum Service Television Fifth Annual High-Definition Television Conference, November 7, 1991, Washington, D.C. The Public Broadcasting System estimates that conversion to HDTV service could cost from $1.7 to $4.4 million per station for pass-through of network programming, and $9.5 to $12.3 million for full program origination. CBS estimates that network pass-through would run from $1.5 million, and total plant conversion would run $11.6 million. Id.

[44] For example, Ted Turner has amassed a huge program library, buying up the rights to films produced over the past several decades.

employment rules and children's television regulations. General commercial time or format limitations will add yet another layer of monitoring, record-keeping and reporting as broadcasters will need to ensure that their programming does not contain too many minutes of commercial time. The need to monitor commercial limits will also add to the Commission's heavy workload, consuming scarce resources. In this regard, it is inevitable that if limits are adopted, the FCC will be drawn into protracted arguments over whether a program is "entertainment" or "commercial."[45/]

17. Reinstating commercial limits will also impose indirect burdens on advertisers -- burdens which were previously recognized by the Commission when it eliminated the commercial guidelines. For example, commercial limits could have an anti-competitive effect. If commercial levels are restricted, the price of each commercial spot is likely to increase, thereby restricting the availability of advertising to larger businesses that are able to meet the higher prices. This could have a two prong effect. First, the higher price may effect <u>who</u> can purchase commercial time. Small businesses that have small advertising budgets may not be able to afford more expensive

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[45/] In fact, the Commission recognized in the <u>Notice</u> that in the past it spent enormous amounts of staff time trying to determine whether particular programs had been logged properly by licensees. <u>Notice</u>, at para. 2 n.3.

advertising time.[46] Second, it is unlikely that newer, independent stations that do not have a record of strong viewership will be able to attract the national advertisers who are willing and able to pay increased prices. Thus, smaller stations might be forced off the air, thereby decreasing diversity by eliminating additional program outlets.

18. This result is especially troublesome given that the Commission has recognized important benefits associated with the development of independent television broadcast stations. The FCC has stated that one of the primary benefits -- the development of new networks to compete with ABC, CBS and NBC -- should be encouraged.[47] Without an adequate base of independent stations with which to affiliate, there can be no new television networks. Since the ability to generate sufficient advertising revenue is critical to the existence of independent television stations, any commercial time or format regulations will indirectly jeopardize the creation of new networks. In fact, industry information indicates that Time-Warner and Paramount are each interested in forming a fifth television

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46/ CBS stated that commercial guidelines potentially depress available commercial time below advertiser demand thus driving up its cost and ultimately resulting in increased consumer prices and the inability of smaller businesses to afford the purchase of broadcast time. Television Deregulation, at p. 1131.

47/ Finsyn, at paras. 104-108.

broadcast network,[48] yet experts question whether there are enough viable independent television stations to support such a new network.[49]

19. The benefits of new networks are well exemplified by the emergence of the Fox Network, which has helped many independent television stations to survive and grow. 58% of Fox affiliates had negative cash flows before becoming part of the network.[50] 64% of Fox affiliates achieved positive cash flows within a few years after affiliating with Fox.[51] In addition to insuring the viability of many independent stations, the Fox network has provided high-quality first-run programming. That competition has caused the established networks to develop more and more high-quality programming. Finally, the existence of a healthy base of independent TV stations provides additional ownership opportunities for minority broadcasters, an important national goal which will be threatened if commercial time limits are reimposed.

48/ See "Latest Move Adds Twist to Bidding War," U.S.A. Today, October 27, 1993, Section B, pp. 1-2. See also "It's Warner v. Paramount," Broadcasting & Cable, November 1, 1993, Volume 123, No. 44, pp. 1, 5-6.

49/ Id.

50/ In the Matter of Evaluation of the Syndication and Financial Interest Rules, Comments on Notice of Proposed Rulemaking, FBC Television Affiliates Association, filed June 14, 1990, at 5 n.12.

51/ Id.

F. Limitations on Commercial Time May Have the Effect of Jeopardizing Many State Broadcaster Associations

20. The majority of State Broadcaster Associations have had to supplement their income from member dues to remain viable. An increasingly important source of such income is derived from Non-Commercial Sustaining Announcements ("NCSA") programs. Under those programs, broadcast stations donate airtime to their State Broadcast Associations. The Associations, in turn, make this "time bank" available to, for example, the State Department of Health which wants time sensitive messages aired throughout the state during various dayparts and within a certain period of time.[52] The state agency makes a grant to the Association which helps distribute the messages and record their effectiveness.

21. These programs are well known to the Commission. They began in 1962 in Southern California and exist, or are in development, in some 38 states today.[53] The "NCSA monies" are typically used to fund a variety of broadcast seminars on legal,

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[52] Other typical recipients of NCSA advertising time include: Public Transportation Authorities; Offices of Tourism; State Departments of Conservation and Natural Resources, Social Services, Agriculture, and Education; Chambers of Commerce; the Salvation Army; and the United Way.

[53] The 38 states are as follows: Alabama, Arizona, Arkansas, California, Connecticut, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland/District of Columbia/Delaware, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, Puerto Rico, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia and Wisconsin.

technical, sales, programming, and management issues, as well as scholarships and internships. FCC officials routinely attend those seminars to speak and answer questions, all in an effort to increase the level of knowledge and rule compliance. In short, the goal of NCSA programs is to use the income to strengthen, and make more responsive, the local broadcast industry in each state.

22. The FCC has issued several rulings in connection with NCSA programs. The NCSA announcements, for purposes of the Sponsorship Identification Rules, are to be treated as "paid for" if the State Association uses the money for general operations.[54/] All State Broadcast Associations use their NCSA monies for such operations. Accordingly, NCSA announcements are generally tagged "This message was sponsored by the _____ Department of Health." When there were program logging rules and commercial time limits, the FCC ruled that such announcements had to be logged as commercial and counted against the hourly limit.[55/]

23. To date, television stations and radio stations have been willing to donate significant amounts of airtime to help maintain their State Broadcaster Associations as important resources they can rely upon for information and action as needed. If, however, commercial time limits are reinstated, the NCSA announcements will count along with regular commercial announcements against the limit. This will undoubtedly cause stations to stop, or at least significantly reduce, their

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54/ Petitions for Modification, 53 FCC 2d 370 (1975).

55/ In re Waiver of Section 317, 45 FCC 2d 655 (1974).